

Patrick Levine Rose (Esq.-P-43265)  
Patrick Levine Rose P.L.C.  
Attorney at Law  
P.O.B. 1070  
East Lansing, MI 48826  
(517) 202-1955  
patricklevinrose@gmail.com

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Addendum to Testimony  
(Submitted to Chair, Committee Members)  
(\*In Reply to the Chair's question Re:  
the OMA and FOIA extension in the bill)

Dear Committee Chair and Members:

I testified today via Zoom and my written testimony was made part of the record. When the Chair asked me a question, I was unable to decipher the question due to audio difficulties. Then, I got an email stating the following:

I. **The Question.**

“Since you were having trouble hearing, the chair’s question was about FOIA and Open Meetings Act. Here’s the gist of the question, not an exact quote: “There are provisions in the bill on page 22 relating to FOIA and OMA, but you are expressing concerns about transparency. Is this wording inadequate in your opinion, and if so what sort of further protection would you prefer?”

II. **My Answer.** **First**, I reviewed the language of H.B. 5141 (on page 22 of the bill). It states:

**[A. On the Open Meetings Act extension]**

“(10) The business that a financial management team may perform  
21 must be conducted at a public meeting of the financial management  
22 team held in compliance with the open meetings act, 1976 PA 267,  
23 MCL 15.261 to 15.275.” [H.B. 5141, Sec. 10, p.22 of the Bill]

**[On the Freedom of Information Act extension]**

24 (11) A writing prepared, owned, used, in the possession of, or  
25 retained by a financial management team in the performance of an  
26 official function is subject to the freedom of information act,  
27 1976 PA 442, MCL 15.231 to 15.246. [H.B. 5141, Sec. 11, p.22 of the Bill]

- A. **My Answer on the Open Meetings:** The Open Meetings Act language in Section 10 does not create transparent decision-making. The limiting language in Sec 10 casts a shadow on when the OMA applies and limits it in important ways.

How to fix it? Sec. 10 should name all “bodies” subject to the Open Meetings Act without any other qualifying language. Those bodies include the Receivership Transition Advisory Board or the Emergency Loan Board.

There is no good fix. The Emergency Manager Law gives final legal authority to the Treasurer and to the Governor who do not decide at open meetings.

Bottom line: any claim that Section 10 will require all decisions of the Financial Team to be deliberated upon and made at an Open Meeting is a false claim.

1. This amendment does not fix the problem that Sec. 10’s extension of the OMA will not create transparency in the Emergency Management system. Why?
2. The OMA language in Sec. 10 does not apply to the Treasury or the Governor’s Executive Office staff, even though they have the final authority to make decisions. There is no Open Meetings Act transparency as to these Executive branch officers.
3. If the Financial Team members confer with the Governor’s office or with Treasury Department officials or staff, the Governor can claim those conversations are subject to Executive Privilege. This claim has been raised as a defense to FOIA requests and it can be raised as a defense to a claim the OMA applies to them.
4. If drafters of H.B. 5141 believe the Emergency Manager or the Financial Team will make decisions under Emergency Management at a meeting, they are mistaken.
5. Final decisions of the Financial Team are accepted or rejected by the Treasurer. The Treasurer is not a body. So the Treasurer is not covered by the OMA.
6. The Treasurer and his or her team (with the Governor’s Executive Office staff) make decisions on Emergency Management issues outside of public meetings.
7. Often, the Treasurer communicates to an Emergency Manager (or Financial Team) in advance what final decisions will be made. The Emergency Manager or the Financial Team then ratify them, or submit a resignation, evading the OMA.
8. Under Sec. 10, the Financial Team members will hold conversations with the Treasury Department, and with outside parties and with the Governor’s office.
9. Under the OMA, those conversations would have to be held at a public meeting.

10. Section 10 is drafted to narrow when the OMA applies. Its language requires the Financial Team to deliberate at an Open Meeting only apply when “business” is “performed” – not when decisions are made. By this language, Section 10 adds new language onto the OMA so that it will not apply to where the decisions are made.

**B. My Answer on the FOIA Language in Section 11:**

1. Documents used to make Emergency Management decisions should be open to the public. HB 5141 sponsors say this is their goal. The bill does not achieve the goal.
2. To insure Emergency Management documents are open to the public, Section 11 must be amended to state the following offices are subject to FOIA: the Governor, his or her Executive Office, the Treasurer and Treasury Department, the Emergency Loan Board, the Receivership Transition Advisory Board, all City officials and agents working under control of the Financial Team or the State. All these offices must be subject to FOIA
3. Section 11 is crafted to limit FOIA Rights. If the House bill sponsors of H.B. 5141 want FOIA disclosure to apply to the documents used in Emergency Management, Section 11 will have to be rewritten.
4. If this FOIA strengthening language is not added, the documents relied on by the Financial Team and Treasurer used to make most of the Emergency Management decisions will remain confidential and not subject to disclosure under FOIA.
5. Without seeing the documents the Financial Team and Treasurer rely on to make their decisions, it will be impossible to challenge them or to impeach them. The documents will remain hidden and undisclosed. This will conceal the real reasons behind decisions.
6. FOIA must apply to all documents of government agencies involved in Emergency Management. This information is what will help reveal any illegal conduct, incompetency, possible corruption and bad decisions.
7. Emergency Management can be made to remain accountable only if FOIA applies to all offices and government agents. H.B. 5141 carefully shields Emergency Management decision-makers from being accountable to turn over documents under FOIA.

**Conclusion:** I hope this answers your question. I would be happy to discuss this. Many thanks for allowing me to testify via Zoom today.

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